

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10515) that:

(CARRIER'S FILE NO. TCU-D-3329; TCU FILE NO. 393-DO-030-D).

1. Carrier acted in an arbitrary and capricious manner, and violated Rule #24 of the Agreement, when by notice of February 22, 1990, it assessed the discipline of 'termination from service' against Claimant Jose Lujan.

2. Carrier shall now reinstate Claimant to service with seniority rights unimpaired, and compensate Claimant an amount equal to what he could have earned, including but not limit to daily wages, overtime and holiday pay, had discipline not been assessed.

3. Carrier shall now expunge the charges and discipline from Claimant's record.

4. Carrier shall now reimburse Claimant for any amounts paid by Claimant for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by the Carrier."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon:

At the time of the incident at issue, Claimant was employed as a Baggageman at Carrier's passenger terminal in Denver, Colorado. He had been a Baggageman for nine years. On November 14, 1989, Claimant assisted a passenger, Mr. Joseph Livio, who requested use of a wheelchair. Mr. Livio gave Claimant a \$5.00 tip for his service and proceeded to the ticket office.

Claimant then called Mr. Livio back from the ticket office to the baggage room and requested a \$5.00 fee for use of the wheelchair. Mr. Livio gave the Claimant the \$5.00 fee and received a receipt for that amount from Claimant.

Upon his arrival in Los Angeles, Mr. Livio contacted Amtrak on November 19, 1989, concerning one piece of his luggage which had not reached his final destination. His inquiry was forwarded to the District Supervisor for Amtrak, Mr. Michael Flitton, who was stationed in Salt Lake City. On November 20, 1989, Mr. Flitton called Mr. Livio. During that telephone conversation the issue of the \$5.00 wheelchair charge was discussed. Subsequently, Mr. Flitton undertook an investigation of the wheelchair charge.

As a result of Flitton's investigation, which took place over approximately three weeks' time, he discovered that the money in question had not been recorded through the Carrier's accounting procedures, nor had Carrier's "original" copy of the receipt received by Mr. Livio been included with the other baggage room receipts from November 14, 1989. At Mr. Flitton's request, Mr. Livio furnished him with copies of his baggage Claim checks and his copy of the General Purpose Receipt indicating a \$5.00 charge for use of a wheelchair.

On or about December 1, 1989, Flitton contacted Claimant concerning the incident. Claimant acknowledged that he had charged Mr. Livio \$5.00 for the wheelchair, but said that he had misinterpreted the "asterisk" in the list of baggage charges, which exempted wheelchairs from the \$5.00 fee. He also acknowledged that Mr. Livio had given him a \$5.00 tip. Claimant further stated that on the day in question he had wrapped the \$5.00 fee in the receipt and placed it in the cash drawer.

By letter of December 26, 1989, Carrier notified Claimant to appear for a formal investigation concerning his alleged violation of Rules "F" and "K" of the National Railroad Passenger Corporation Rules of Conduct:

"In that, while on duty as a Baggage man at Denver, Colorado, on November 14, 1989, you charged a passenger a service charge of \$5.00 which you failed to remit, thereby depriving the Corporation of said revenue."

The investigation was held on February 13, 1990. By letter of February 22, 1990, the Claimant was dismissed from Carrier's service. The Organization appealed Claimant's dismissal up to and including the Director of Labor Relations, and the issue is properly before this Board for adjudication. Following the Organization's October 17, 1990 Notice of Intent to the Board, Carrier unilaterally reinstated the Claimant to service on a last chance basis effective November 30, 1990, with seniority rights unimpaired, but without pay for time lost.

It is Carrier's position that dishonesty in any form is an offense which warrants dismissal. Carrier notes that Claimant admitted collecting

\$5.00 from Mr. Livio for use of the wheelchair on November 14, 1989, despite Carrier policy to the contrary, and cannot account for the missing cash or receipt. It points out that Claimant had more than nine years experience in baggage handling and related duties, and urges that Claimant's alleged ignorance of the baggage policy concerning wheelchairs is not credible.

In Claimant's defense, the Organization maintains that Carrier has not met its burden of proof concerning the charges against Claimant. The Organization suggests that the Claimant's explanation of what may have happened to the \$5.00 and the receipt (that someone removed it from the baggage counter area) casts serious doubt upon Carrier's position. It urges that in the absence of more concrete evidence of misdeed, the discipline assessed should be revoked and Claimant made whole for all wages lost.

Testimony on the record before the Board from Mr. Flitton and Mr. Livio establish clearly that Claimant erroneously charged the latter for use of a wheelchair. In light of the Claimant's long experience as a baggage handler, his protested ignorance of Carrier's policy in that regard is difficult to credit. Moreover, Claimant has offered two possible scenarios for what he did with the \$5.00 and the receipt (put it in the drawer, or slid it under the daily log book), neither of which is substantiated by any oral or written evidence on this record. Such explanations must be viewed as self-serving at best, and cannot counter the weight of testimony and documentary evidence against Claimant.

It is a well-established arbitral tradition, and this Board has held in past Awards, that theft of any magnitude is a serious breach of an employee's responsibility to his employer. Nothing on the record before us suggests that the Board should modify Carrier's assessment of discipline in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devoe - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.